Topfree 10 plan court test

Women arrested for baring breasts; 'We'll plead not guilty'

By Laura Buterbaugh
Democrat and Chronicle

Ten women arrested Saturday for baring their breasts in public now must decide whether to fight a second courtroom battle, in hopes of legalizing their nudity.

Because they weren't expecting to be arrested during their fourth annual Topfree picnic at Durand Eastman Park, the women aren't sure what they'll do this time.

"We really haven't had time to figure out our next step," said Kathie Reilly of Rochester. "We'll plead not guilty, then take it from there."

Saturday was the second time in four years that women associated with the Coalition for Topfree Equality were arrested after refusing to don shirts at a public park.

In 1986, at the coalition's first picnic at Cobbs Hill Park, the group made national headlines and an appearance on the *Donahue* TV talk show when seven members, known as the "Topfree Seven," were charged with indecent exposure after removing their shirts.

After a weeklong trial, City Court Judge Herman J. Walz dismissed the charges, ruling the arrests violated the women's rights to free speech. But he upheld the state law against public nudity, and his decision is not binding on other city judges.

In 1987 and 1988, no one was arrested at the picnics.

This year, the women were charged with exposure of a person, a violation that carries a maximum penalty of 30 days in jail and a $500 fine, and released. They are to appear tomorrow in City Court, this time before Judge John Manning Regan.

Coalition spokeswoman Mary Lou Schloss said that if the case goes to trial, the women won't use the First Amendment right of free speech as part of their defense.

"We used it the first time and came out with a hollow victory," Schloss said yesterday. "We would go strictly with equal protection under the law this time."

The group claims the state law,

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Topfree 10 face test in court for baring breasts

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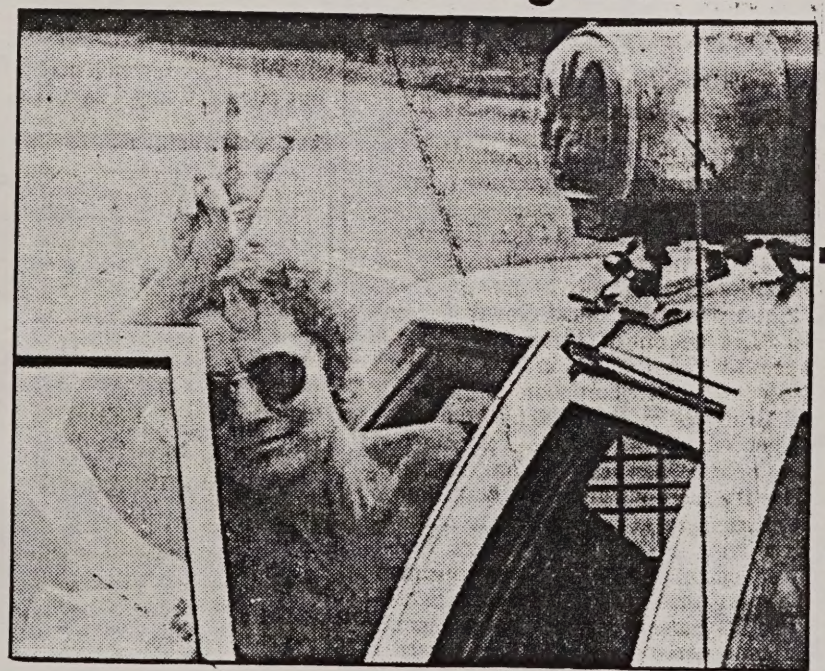
which prohibits women from exposing their breasts in public except for nursing babies, violates the 14th Amendment to the U.S. Constitution, which calls for equal protection under the law.

Unlike the first picnic, when the women planned to be arrested in hopes of getting the law overturned, this year was not meant to rekindle the local court fight.

"I didn't want to deal with being arrested or deal with a trial. But at the moment that police officer told me to put my shirt on, it was clear to me I wasn't going to," Schloss said.

Monroe County Sheriff's Deputy Richard Cox, who oversees park patrols, said his department simply was enforcing the law Saturday. He also said Sheriff Andrew P. Meloni Jr. was told of the arrests later that day but did not play a part in the decision.



Wayne Scarberry Democrat and Chronicle

Kathie Reilly, arrested for going topless in public at Durand Eastman Park, flashes a victory sign as she gets into a police car Saturday.

Tierney O'Brien-Dovan, who was arrested for going topless while nursing her 2-year-old daughter, Grace, said she will fight the charges because the law doesn't apply to nursing mothers.

"They said I wasn't being discreet enough while I nursed," she said. "If you ask me, that's a value judgment."

The Pittsford woman also said police threatened to put her daughter in foster care and charge her with endangering her daughter's welfare. But O'Brien-Dovan's husband later arrived and took the child home.

Since the first picnic, the coalition has been lobbying state Assembly members to modify or overturn the state law. But Schloss said that process is a lengthy one.

Publicity may again be a good way to spread the group's message, she said, adding that reporters from *The New Yorker* magazine were at Saturday's event.

"But Donahue hasn't called yet," she joked.

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